REMARKS

Claims 1-8 are pending in the application.

Claims 1-8 have been rejected.

Claim 1 has been amended, as set forth herein.

Claims 3 and 4 have been canceled, without prejudice.

I.   REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) and Aitken (US Patent 6,947,743). Claims 2, 3 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) and Aitken (US Patent 6,947,743) and further in view of Boyle (US Patent 6,138,158). Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) and Aitken (US Patent 6,947,743) and further in view of Vance (US Patent 7,043,264). Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) and Aitken (US Patent 6,947,743) and Boyle (US Patent 6,138,158) and further in view of Vance (US Patent 7,043,264).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant

of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

To further prosecution, independent Claim 1 has been amended to include the elements/features recited in dependent Claims 3 and 4.

Independent Claim 1 now recites:

> *a **Push Initiator** sending a Push message to a **Short Message Service Center** through a Push Proxy Gateway (PPG);*
>
> *the Short Message Service Center segmenting the Push message to obtain a group of short messages, and scheduling the group of short messages in a transaction mode and delivering them to a mobile station;*

after receiving the group of short messages, the mobile station recombining them into an integral message,

*wherein if all the short messages of the group obtained by segmenting are sent successfully in a predetermined time, the Short Message Service Center returns an **Acknowledgement Message** to the PPG, and **the PPG sends a Result Notify Message to the Push Initiator according to the Acknowledgement Message**, and*

*if any one of the short messages of the group obtained by segmenting is sent unsuccessfully in a predetermined time, the Short Message Service Center returns a **Submission Failure Message** to the PPG, and **the PPG sends a Result Notify Message to the Push Initiator according to the Submission Failure Message**.*

(bold texting supplied)

Those skilled in the art will understand that both the "Acknowledgement Message" and the "Submission Failure Message" in claim 1 are **Submission Response Messages** which are created and sent by the Short Messaging Service Center ("SMSC") as a response message to a submission message sent to the SMSC. In the method of claim 1, the SMSC schedules the group of short messages using the transaction mode and delivers them to the mobile station, and **directly returns a delivery result to the PPG in a Submission Response Message** (see paragraph [0036] of the Description and Figure 3 of the present application). If all the short messages of the group obtained by segmenting the Push message are sent successfully, the SMSC returns an Acknowledgement Message to the PPG. If any one of the short messages is sent unsuccessfully, the SMSC returns a Submission Failure Message to the PPG. Thus, the PPG receives the delivery result of the Push message through the Submission Response Message, and **there is no need for the SMSC to make a Status Report Message and feedback it to the PPG** (see paragraph [0036] of the Description and Figure 3 of the present application).

In contrast, in the prior art as mentioned in the background of the invention, divides one Push message into multiple short messages and submits them to the SMSC; the SMSC receives the multiple messages and returns a Submission Response Message to the PPG for each message (see also Figure 2); the SMSC performs message scheduling for the received messages in a store and

forward mode; after the sending has been finished, the SMSC makes and feedbacks a Status Report Message to the PPG (see paragraphs [0012], [0013] and [0014] of the Description). **In the prior art, the SMSC not only sends a Submission Response Message to the PPG for each short messages, but also makes and feedbacks a Status Report Message to the PPG after the sending of all the short messages.** Thus, Applicant's method only sends a Submission Response Message after all messages have been sent (an Acknowledgement Message) or after a failure of one of the messages (a Submission Failure Message).

The Office Action appears to concede that Cohen and Aitken do not disclose, teach or suggest the elements/features recited in original dependent Claims 3 and 4 (which have now been included in independent Claim 1). See, Office Action, pages 5-6. However, the Office Action argues that Boyle teaches these elements/features, citing Boyle, Col. 15, line 39; Col. 16, lines 14-21; and Figure 4. Applicant respectfully disagrees. In Boyle, it is disclosed that the messenger in the link server device receives a confirmation from the message system. However, Boyle does not explicitly disclose that the confirmation is a Submission Response Message or a Status Report Message, that is, Boyle does not explicitly disclose that the message system directly returns a delivery result to the messenger in a Submission Response Message. Moreover, Boyle discloses that if no acknowledgement for any of the message fragments is received at 765, the message system resends the message fragment at 767 until an acknowledgement is received (see column 16, lines 8-11 and Figure 8C). Those skilled in the art will understand that the "acknowledgement" received at 765 refers to a Submission Response Message. From the above disclosure it is seen that **the message system in Boyle not only sends an acknowledgement to the messenger in the link server for each message fragments, but also sends a confirmation to the messenger in the link server after the sending of all the short messages.** Therefore it is reasonable to derive that the confirmation in Boyle is not a Submission Response Message as a response to the message fragment, but a Status Report Message initiated by the messenger to report the status of the delivery. In summary, **Boyle does not disclose or teach the technical features** "if all the short messages of the

group obtained by segmenting are sent successfully in a predetermined time, **the Short Message Service Center returns an Acknowledgement Message to the PPG**" and "if any one of the short messages of the group obtained by segmenting is sent unsuccessfully in a predetermined time, **the Short Message Service Center returns a Submission Failure Message to the PPG**".[1] In addition, in Vance, the SMS is a normal store and forward system (see column 6, lines 6-7 of Vance), and therefore, Vance does not disclose or teach the above distinguishing technical features of Claim 1.

Therefore, the proposed combination of Cohen-Aitken-Boyle does not disclose, teach or suggest each and every element/feature recited in amended independent Claim 1.

In addition, in Applicant's disclosure, the operation mode between the Push Initiator and the subscriber is interactive transaction mode (see Figure 3). With this mode, the Push Initiator can be informed whether the Push message is actually successfully delivered to the subscriber. As indicated in the new claim 1, if all the short messages of the group obtained by segmenting are sent successfully in a predetermined time, the SMSC returns an Acknowledgement Message to the PPG, and **the PPG sends a Result Notify Message to the Push Initiator according to the Acknowledgement Message**; and if any one of the short messages of the group is sent unsuccessfully in a predetermined time, the SMSC returns a Submission Failure Message to the PPG, and **the PPG sends a Result Notify Message to the Push Initiator according to the**

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1 In Aitken, it is disclosed that in order to facilitate the delivery of short messages of length greater than 128 octets from an IMT-2000 SMSC to a subscriber in a PDC network, the short message is segmented into lengths of 128 octets or shorter and delivered as two separated short messages (see column 5, lines 15-20 of Aitken). However, Aitken does not disclose the SMGF directly returns a delivery result to a PPG or such an entity in a Submission Response Message. Aitken even does not mention the SMGF returns any response. Therefore, Aitken does not disclose or teach the above distinguishing technical features of Claim 1. As mentioned in the Office Action, Cohen fails to explicitly teach the SMSC segmenting the Push message to obtain a group of messages and scheduling the group of short messages in a transaction mode. Accordingly Cohen will not disclose or teach the above distinguishing technical features of Claim 1.

Submission Failure Message. In this way the Push Initiator can learn whether the initial Push message is actually successfully delivered to the subscriber.

In Boyle, it is disclosed that the messenger in the link server device receives a confirmation from the message system. If the confirmation indicates that the encoded PUSH PDU is not successfully delivered to the client device, the corresponding notification is queued into the queue list for another attempt. If the confirmation is a successful delivery, the status is preferably kept in the messenger for future reference (see column 16, lines 14-21 of Boyle). However, Boyle does not explicitly disclose or teach that the messenger in the link server sends a result notify message to the Web server (equivalent to the Push Initiator in new claim 1) (see Figure 4 of Boyle). Therefore, Boyle does not disclose or teach the technical features "if all the short messages of the group ..., the PPG sends a Result Notify Message to the Push Initiator according to the Acknowledgement Message" and "if any one of the short messages of the group ..., the PPG sends a Result Notify Message to the Push Initiator according to the Submission Failure Message".

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 1, 2, and 5-8.

II.   CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.
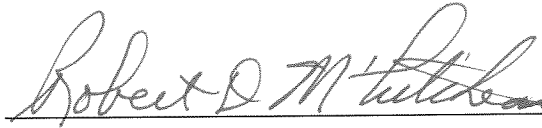
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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